IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 175 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

JUMMA OSMAN

Appearance:

1. Second Appeal No. 175 of 1992

MR PRANAV G DESAI for Appellant 1-2

MR BALVANTRAY MEHTA for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 28/04/2004

ORAL JUDGEMENT

1. The respondent was employed as a conductor in the

Gujarat State Road Transport Corporation - the appellant herein. He was dismissed from service after a departmental inquiry. He filed a suit for the declaration that the dismissal order was illegal. The suit was decreed by the trial Court. The Corporation therefore filed an appeal. The appeal was dismissed by the learned Extra Assistant Judge, Jamnagar. The order of dismissal from service was set aside. The Corporation has therefore filed this Second Appeal under section 100 of Civil Procedure Code challenging the said judgment & decree of the Appellate Court.

2. The main contention in the present appeal is whether the Civil Court has jurisdiction to entertain the suit in view of the fact that the respondent conductor was admittedly a workman as defined in the Industrial Disputes Act, and that the dispute raised in the present proceeding is an industrial dispute within the meaning of the said Act and the appropriate remedy for the workman was to raise an industrial dispute. Now this question arose for decision in Second Appeal No. 61 of 1986. When the said appeal came up for final hearing on 27-7-1993 the learned Single Judge expressed the opinion that the views expressed by the two Division Bench rulings of this Court in the case of Mohanlal Popatbhai Patel Vs. The Gujarat State Road Transport Corporation and anr., reported in 1977 (1) SLR 30 and in case of Chandrakant Tukaram Nikam Vs. Municipal Corporation of the City of Ahmedabad, reported in 34 (1) GLR 684 were in conflict with each other and it was difficult to reconcile them. He, therefore, referred the said matter to the Full Bench.

3. Now the Full Bench has disposed of the reference by its judgment and order dated 13-2-2004 answering the reference as follows in para-9 of this judgment.

> "9. It will be seen from the decision of this Court in Mohanlal (supra) that the question of jurisdiction of Civil Court was ever in issue at any stage of the proceedings and, therefore, that decision did not lay down any ratio on the question of jurisdiction of the Civil Court which would be compared with the ratio of decision of Division Bench of this Court in Chandrakant Nikam's case (supra) in which the question of jurisdiction of Civil Court was specifically raised and considered. Since the question of jurisdiction of Civil Court which never arose was obviously not decided in Mohanlal's case (supra), no question of any conflict between that decision

and the decision in Chandrakant Nikam's case rendered by this Court could arise. Moreover, the decision of this Court in Chandrakant Nikam's case (supra) having been carried in appeal to the Supreme Court, now the appellate judgment of the Apex Court governs the field and the law is settled as per the ratio of decision of the Supreme Court in Chandrakant Nikam (2002) 2 SCC 542 which followed the decision of Larger Bench of the Supreme court in Rajasthan SRTC will now govern the fate of Second Appeal. The Reference is answered accordingly. The Second Appeal will now be placed before the appropriate Court hearing such appeals for hearing and disposal. "

4. Thus the Full Bench has taken the view that the decision of the Supreme Court in Chandrakant Nikam's case (supra) will govern the fate of Second Appeal. The Supreme Court in the said case held as follows in para-6 of its decision.

"6. In the aforesaid premises and having regard to the relief sought for in the suits filed in the civil court, we have no manner of hesitation to come to the conclusion that in such cases the jurisdiction of the civil court must be held to have been impliedly barred and the appropriate forum for resolution of such dispute is the forum constituted under the Industrial Disputes Act. We, therefore, do not find any infirmity with the impugned judgment of the High Court requiring our interference. The appeals accordingly fail and are dismissed. We would however observe that it would be open for the appellant workmen to approach the appropriate industrial forum and such forum if approached, will dispose of the matter on its own merits. There will be no order as to costs. "

5. It follows from the said decision of the Supreme Court that the Civil Court had no jurisdiction to entertain and decide the present suit. The appeal is therefore allowed. The suit filed by the respondent workman is ordered to be dismissed. However it would be open for the respondent workman to approach the appropriate industrial forum and such forum, if approached, will dispose of the matter on its own merits. No order as to costs.

Dt: 28-4-2004 (M.C. Patel, J)

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